

Tax Parcel No.:
Subdivision No.:
Prepared by/Return To:
Delaware Department of Transportation
Division of Planning
For overnight 800 Bay Road,
Dover, DE 19901
Or
Regular Mail P.O. Box 778
Dover, DE 19901

Henlopen Transportation Improvement District
Infrastructure Recoupment Agreement

This Infrastructure Recoupment Agreement is made as of this ____ day of _____, 2020, by and between the Delaware Department of Transportation (hereinafter referred to as “**DelDOT**”), Sussex County, a municipal corporation of the State of Delaware (hereinafter referred to as the **County**), and _____ its heirs, successors and assigns (hereinafter referred to as “**Property Owner**”).

WITNESSETH:

WHEREAS, DelDOT and the County in overseeing the coordination of land use and transportation require construction of various transportation improvements relating to the various anticipated land development projects in accordance with Title 17, Chapter 5, § 507 of the Delaware Code; and

WHEREAS, DelDOT and the County have established the Henlopen Transportation Improvement District, as outlined in the “Agreement Regarding Henlopen Transportation Improvement District,” executed by both parties on _____ 2020.

WHEREAS, the County shall set up a fund (hereinafter referred to as the “**Henlopen TID Fund**”) to help fund the planned transportation improvements in lieu of developments preparing a traffic impact study and either phasing its project or constructing offsite transportation improvements; and

WHEREAS, the Property Owner is willing to contribute to the Henlopen TID Fund in recognition of the benefits the new transportation improvements will bring their property, and in order to immediately proceed with the construction and development of their property; and

WHEREAS, said property is located on _____ Road, Sussex County, Delaware, being Sussex County Tax Parcel _____ consisting of _____ acres, more or less, as shown on Exhibit “A” (hereinafter referred to as the “**Property**”).

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

I. Traffic Impact Study

The **Property Owner** shall not be required to perform a traffic impact study and, in lieu thereof, shall contribute through the Henlopen TID Fund.

II. Right-of Way (R/W) Dedication

Dedication of rights-of-way in lieu of some or all of the fee shall be by agreement between the **Property Owner** and **DelDOT**, with payment of the fee being required if any party is not amenable to the proposed dedication. The value of the rights-of-way to be dedicated shall be determined in accordance with **DelDOT** policies and regulations. The creditable area shall be determined based on highway plans acceptable to **DelDOT** and shall exclude the standard dedications provided in **DelDOT**'s Development Coordination Manual, rights-of-way for any proposed subdivision streets, and any lands needed to accommodate the site entrance.

III. Transportation Improvement Funding

Funding for the transportation improvements within the Henlopen TID will be provided by the **Property Owner** as detailed below:

A. **Henlopen Transportation Improvement District Fund** – The **County** shall create and administer a separate account, the Henlopen TID Fund, to make timely payments to **DelDOT**, for all engineering professionals and contractors performing work on the Henlopen TID transportation improvements. Subject to the provisions of this Agreement, contributions (defined below) to the Fund will be made by the **Property Owner** and by Other Property Owners who execute recoupment agreements in substantially the same form as this Agreement, and by **DelDOT**, as required.

B. Contributions To The Fund

1. **Contribution Rates** – The established rates for the Henlopen TID are listed on Exhibit “B”. Subject to the limitations set forth below, the **Property Owner** shall contribute to the Henlopen TID Fund (hereinafter, the “contribution” or “contributions”), in amounts consistent with the established rates, for the **Property** on the attached Exhibit “A,” which amounts shall be adjusted annually as set forth in paragraph D below. Once contributions for a specific development are paid in full, the **Property Owner** shall have no further obligations under this agreement for that development.
2. **Contribution Timing** - Contributions shall be made at the time of **Property Owner** application to the **County** for a building permit for the **Property**. The parties acknowledge and agree that no building permits for a building or project located on the **Property** shall be issued until such time as the contributions to the Henlopen TID Fund associated with the particular building or project phase have been made. Where a project involves residential houses, no building permit for a particular unit shall be issued until the contribution for that unit has been made. For a non-residential building, where contributions are to be made on a square foot basis, no building permit for a particular building shall be issued until the contribution for such building has been made.
3. **Property Rezoning** - If the **Property** is rezoned from its current zoning designation, or development plans change, future contributions shall be paid in accordance with the use then being made of the **Property**. For example, if a portion of the **Property** is developed residentially, but then the balance of the **Property** is developed for non-residential purposes, the contributions for the residential portion shall be paid at the residential rates, and the non-residential portions based on the appropriate non-residential rates.
4. **Contribution Notification** - In the event a **Property Owner** has elected to execute this Recoupment Agreement, any final site plan for development of lands of said **Property Owner** subject to contribution hereunder shall contain a statement or note that the issuing

of a building permit is contingent upon paying the then applicable portion of the contribution into the Fund as provided in the Recoupment Agreement for the **Property**.

- C. **Developer Design/Build Credit** - Design and/or Construction of physical improvements in lieu of some or all of the fee shall be by agreement between the **Property Owner**, **DelDOT**, and the **County**, with payment of the fee being required if any party is not amenable to the proposed construction. If a **Property Owner** seeks to design and/or construct physical improvements in lieu of paying into the Fee, the **Property Owner** shall be required to obtain a minimum of three bids for the work. The bids shall be subject to review and approval by the **DelDOT**. Credit toward the fee shall be based on the **Property Owner**'s payments to the selected contractor. Design and/or Construction of improvements required by **DelDOT** and the **County** as part of the development's entrance construction or on-site infrastructure, e.g. subdivision streets, and curb ramps, turn lanes, acceleration lanes at development entrance, shall not be creditable toward the fee. At their discretion, **DelDOT** and the **County** may require improvements beyond the site entrance to correct an unsafe condition that they find would be created or worsened by the proposed development. Such improvements may include, but are not limited to, the addition or widening of shoulders, and/or the construction of a shared-use path or sidewalk along the development's frontage. In that case, the cost of that work shall be determined by the **DelDOT**, using the Shared-Use Path and Sidewalk Fee Calculation Form for those items and current comparable contract bid prices as a guide for other items, and shall be creditable toward the fee.
- D. **Escalation** - While transportation improvement projects await construction funding, the costs of constructing the project will escalate at the rate of inflation for highway construction projects. The amounts paid by the **Property Owner**, therefore, shall be subject to an increase of up to four percent (4%) per year, not compounded, beginning on January 31, 2021 and increasing by the established amount on January 31 of each year thereafter. The actual amount of the increase shall be set by **DelDOT** in January of each year based upon the change in the Consumer Price Index (CPI) for Delaware Region during the previous year. The established rate of increase shall not exceed four percent (4%) in any one year and escalation shall only apply to contributions unpaid on January 31 of each year.

IV. Property Owner Benefits

- A. **No Individual Off-site Improvements** - No Individual off-site road projects will be required as a separate cost for individual developments participating in this agreement, as a condition of approval by **DelDOT** or the **County**.
- B. **No Individual Traffic Impact Study** - No Individual Traffic Impact Study will be required as a separate cost for individual developments participating in this agreement, as a condition of approval by **DelDOT** or the **County**.
- C. **Cost Savings** - Costs for off-site improvements are expected to be reduced due to the proposed comprehensive approach, the cost sharing and the large size of the projects.

V. Administration of the Agreement

- A. **Existing Record Plan Requirements** – Should existing Record Plan transportation improvement requirements conflict with this agreement, **DelDOT**, the **County**, and the **Property Owner** shall work together to expedite the modification(s) to the Record Plan notes. The revision will be a ministerial review, incorporating the TID participation into the Record Plan notes. The **DelDOT** and the **County** review fees for this reconciliation will be considered satisfied from the

initial Record Plan Review fees. For any other changes requiring a resubdivision plan and review, the associated fees will be the responsibility of the legal owner.

- B. Amendments** – This agreement shall not be modified, changed, or supplemented, nor may any of the obligations and rights be waived, except by a written instrument signed by all parties.
- C. Notices** – Whenever a notice is to be given or a document is to be delivered to one of the parties hereunder, it shall be addressed or delivered to:

Property Owner: Attention:

DelDOT: Director, Division of Planning
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903

County: Sussex County Administrator
Sussex County
2 The Circle
P.O. Box 417
Georgetown, DE 19947

- D. Succession of Agreement** – This agreement shall bind and benefit the parties hereto, their successors and assigns: and shall be a covenant running with the Property described in this agreement.
- E. Recordation of Agreement** – The Property Owner shall record a notice of this Agreement, so as to put potential future purchasers of the Property on notice of the obligations created by this Agreement.
- F. Termination of Agreement** – Property Owner’s obligations under this Agreement shall terminate once all fees identified in this agreement are paid in full. Notwithstanding anything herein to the contrary, payment of a contribution for a specific lot or structure shall relieve that lot or structure from any other obligation under this Agreement. However, that lot or structure shall remain a beneficiary of this agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

Property Owner (_____):

_____ (SEAL)

Name: _____
Owner

STATE OF DELAWARE :
: SS.

COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this ___ day of _____, 2020, before me, a notary public, the undersigned personally appeared, _____, who acknowledged himself to be the Property Owner/Developer, and that he as such Property Owner/Developer is authorized to execute the foregoing Henlopen Transportation Improvement District Infrastructure Recoupment Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

Sussex County, Delaware:

By: _____ (SEAL)

Name: _____

Title _____ (President of Council or designee)

STATE OF DELAWARE :
: SS.

COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this ___ day of _____, 2020, before me, a notary public, the undersigned personally appeared, _____, who acknowledged himself/herself to be the _____ for the Government of Sussex County, and that he/she as such _____ is authorized to execute the foregoing Henlopen Transportation Improvement District Infrastructure Recoupment Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

Delaware Department of Transportation:

By: _____ (SEAL)

Name: _____

Title: _____ (Secretary or designee)

STATE OF DELAWARE :
: SS.
COUNTY OF KENT :

BE IT REMEMBERED, that on this ___ day of _____, 2020, before me, a notary public, the undersigned personally appeared, _____, who acknowledged himself/herself to be the _____ for the Delaware Department of Transportation, and that he/she as such _____ is authorized to execute the foregoing Henlopen Transportation Improvement District Infrastructure Recoupment Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

Approved as to form:

By: _____

Title: _____

Exhibit A

Map of individual property subject to agreement

DRAFT

Exhibit B

Henlopen Transportation Improvement District

Initial Contribution Rates

Residential Rates	
Single family detached residential	\$4,900 per unit by phase
	\$5,145 per unit by lot
Multi-family residential, low-rise, 1-2 floors	\$3,822 per unit by phase
	\$4,013 per unit by lot
Multi-family residential, mid-rise, 3 or more floors	\$2,842 per unit by phase
	\$2,984 per unit by lot
Non-Residential Rates	
Under 21 trips per 1,000 SF GFA	\$2.88 per sq ft
At least 21 but less than 34 trips per 1,000 SF GFA	\$3.38 per sq ft
At least 34 but less than 75 trips per 1,000 SF GFA	\$3.88 per sq ft
At least 75 but less than 200 trips per 1,000 SF GFA	\$4.38 per sq ft
200 or more trips per 1,000 SF GFA	\$4.88 per sq ft
Notes: Low-rise Multi-family rate is 78% of single-family detached rate. Mid-rise Multi-family rate is 58% of single-family detached rate. Townhomes are considered low-rise multi-family. All non-residential rates are based on the number of trips per 1,000 square foot of gross floor area. This is based on ITE Trip Generation Manual, 10th Edition.	

Current Contribution Rates

Residential Rates	
Single family detached residential	\$4,968 per unit by phase
	\$5,217 per unit by lot
Multi-family residential, low-rise, 1-2 floors	\$3,875 per unit by phase
	\$4,069 per unit by lot
Multi-family residential, mid-rise, 3 or more floors	\$2,881 per unit by phase
	\$3,025 per unit by lot
Non-Residential Rates	
Under 21 trips per 1,000 SF GFA	\$2.92 per sq ft
At least 21 but less than 34 trips per 1,000 SF GFA	\$3.42 per sq ft
At least 34 but less than 75 trips per 1,000 SF GFA	\$3.93 per sq ft
At least 75 but less than 200 trips per 1,000 SF GFA	\$4.44 per sq ft
200 or more trips per 1,000 SF GFA	\$4.94 per sq ft
Notes: Low-rise Multi-family rate is 78% of single-family detached rate. Mid-rise Multi-family rate is 58% of single-family detached rate. Townhomes are considered low-rise multi-family. All non-residential rates are based on the number of trips per 1,000 square foot of gross floor area. This is based on ITE Trip Generation Manual, 10th Edition.	

Exhibit C

Henlopen TID Recoupment Credit Agreement- ROW Dedication

Agreement No. _____

Development Project

- Development Name _____
- Developer _____
- Total Required Financial Contribution for Development _____
(per Recoupment Agreement)

Henlopen TID Project

- Name of Project _____
- Section of Project _____
(Attach plan)
- Acreage of Right-of-way provided _____
- Total Estimated Cost of Right-of-way Dedication _____
(Attach cost estimate)

Recoupment Calculation

Estimated Cost of Dedication Required for Development	\$ _____
Estimated Cost of Dedication Eligible for Recoupment	\$ _____
TOTAL	\$ _____

(Attach breakout plan)

***Note - Total must equal Total Estimated Cost of Right-of-way Dedication**

Agreement

For dedicating additional right-of-way for the above named Henlopen TID Project, the above named development is credited the following amount toward the Henlopen TID Fund required contribution.
\$ _____

Developer Date

Sussex County Date

Delaware Department of Transportation Date

Exhibit D

Henlopen TID Recoupment Credit Agreement - Construction

Agreement No. _____

Development Project

- Development Name _____
- Developer _____
- Total Required Financial Contribution for Development _____
(per Recoupment Agreement)

Henlopen TID Project

- Name of Project _____
- Section of Project _____
(Attach plan)
- Items Constructed _____
- Total Estimated Cost of Section to be Constructed _____
(Attach cost estimate)

Recoupment Calculation

Estimated Cost of Items Required for Development	\$ _____
Estimated Cost of Items Required for Other Developments	\$ _____
Estimated Cost of Items Eligible for Recoupment	\$ _____
TOTAL	\$ _____

(Attach breakout plan)

***Note - Total must equal Total Estimated Cost of Construction**

Agreement

For performing construction work on the above named Henlopen TID Project, the above named development is credited the following amount toward the Henlopen TID Fund required contribution.
\$ _____

Developer Date

Sussex County Date

Delaware Department of Transportation Date